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AUTHOR Carter, David G., Sr.; Harris, H. John, III
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ABSTRACT

Given the lack of judicial clarity on desegregation and the general reluctance of society to follow the spirit and intent of the Brown decisions, it is not surprising that problems have arisen as a result of desegregation efforts. Nor is it surprising that minority students, teachers, and administrators have been the ones to pay for those problems. When desegregation took place, many black teachers were placed in new positions without regard for their expertise, certification, or personal needs. Others were systematically displaced or demoted. Further, because of lost seniority and demotions, blacks are the first to be laid off because of declining enrollments. Of the courses of action available to correct these problems, the best is for blacks to become more actively involved in the education process and exert their collective power. While black teachers and administrators were being discriminated against during desegregation, so too were students. Black students have been denied equal education by being assigned to the lower levels of ability tracks without being provided with compensatory or remedial assistance. (Author/IBT)

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SECOND GENERATION SCHOOL INTEGRATION PROBLEMS FOR BLACKS

David G. Carter

Associate Dean
School of Education
The University of Connecticut

J. John Harris, III

Associate Professor
School of Education
Indiana University

American Educational Research Association

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School desegregation continues to be the most fervently debated of all educational policy issues; yet for the past quarter century, the focus of the school desegregation discussion has continually shifted. Until recently the broad consensus, at least within what might be called "the enlightened community," was that real racial justice could be secured only through school desegregation and that the courts were the one institution fit (or at least willing) to attempt that task. But as the effects of desegregation began to extend from the South into the North and West, what was previously taken as settled wisdom has now again become a source of conflict.[1]

In addition, to the reappearance of the traditional questions associated with school desegregation, certain related concerns have also matured. These school desegregation related issues include inequality in the discipline administered to minority students, disparity in the placement of minority students in special schools, the tendency to group minority students in lower ability tracks, and (ironically) the displacement of minority teachers and administrators during desegregation. Another issue concerns those minorities who are being layed off as a result of declining student enrollment and the loss of financial support. These and other issues have actually caused some Blacks to reassess their commitment to desegregation. An issue of great importance which will not be addressed in this article is the large number of youngsters currently being assigned to special education.

In fact, many Blacks have forgotten what it was like to be Black in America before the 1954 Brown decision. For one thing, public schools were generally segregated, and the facilities allocated to Black youngsters to be inadequate. Then, on May 17, 1954, the United States Supreme Court decided

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[1] David L. Kirp, "Race, Politics and the Courts: School Desegregation in San Francisco," Harvard Educational Review, 46, November, 1976, p. 572.

Brown v. Board of Education, unanimously holding that segregating white and Black children in state public schools, solely on the basis of race and pursuant to statutes permitting or requiring such segregation, denied Black children the equal protection of the law guaranteed by the Fourteenth Amendment,"[2] For some, the Supreme Court's call to end segregation brought disdain. Others thought Brown "which promise realistically to convert promptly to a system without a white school and a (Black) school, but just schools"[3] would leave America free of discrimination.

Realistically, however, the kaleidoscope of events since Brown I provides an excellent setting in which to view the problem of segregation within a desegregated framework.

This article examines how certain practices utilized by school officials result in the resegregation of students within a desegregated environment. Furthermore, the authors examine some of the problems minority professionals face as a result of desegregation. Finally, the authors conclude with a strategy for countering second generation desegregation problems.

Historical Backdrop

Twenty-six years after the U.S. Supreme Court's decision in Brown, society continues to wrestle with how to desegregate its school effectively. On the one hand, resistance to the steps that move America closer to unitary schools has increased, and though they may not be related, new problems have emerged within desegregated settings.

From its first Brown decision until 1973, the Court ruled only on desegregation cases in the South that had "state statutes compelling or

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[2]Frank Read

[3]Green v. County School Board, 391 U.S. 430, 442 (1968).

permitting segregation of public schools along racial lines."[4] In practice, this judicial stance attacking de jure segregation exclusively was more acceptable (judicially "safe") since it operationalized the differences in the manner in which the courts were interpreting and applying the law. This somewhat skewed approach inevitably attracted Congressional attention. "Simply stated, Congressional tactics encouraging desegregation actually nurtured the seeds of resistance. Congressional debate began to focus on the issues surrounding de facto versus de jure segregation."[5]

> The Courts in this period held that while public school students had a constitutional right to avoid the objects of discrimination, they did not have a constitutional right to attend or refrain from attending any particular school on the basis of racial considerations unless there had been overt discrimination against them.[6]

While grappling with the legal issues surrounding segregation, the Supreme Court has yet to settle on a clear course for those committed to the elimination of school segregation. It is possible, though, to discern a tentative direction.

Whether or not the Court intended Brown to eradicate segregation regardless of the method, or simply to guarantee each child access to an equal education, the American courts after 1954 had to focus on the elimination of segregated school systems. Beyond judicial action, however, educators must still take steps to avoid "resegregating" students after desegregation plans have been implemented.

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[4]Roberta Y. Barry, Intention As a Requirement for De Jure School Segregation, Ohio State Law Journal, 37, 1976, p. 653.

[5]David G. Carter, "The Case Against Separate Schools," The Clearinghouse, 51, November, 1977, p. 127. See Congressional Record. 2280, February 6, 1964 and Bell, "The Real Cost of Racial Equality," Civil Liberties Review, Summer, 1974, p. 84.

[6]Martha McCarthy, "New Directions in Desegregation Litigation," ed. Frank Aquilla, School Desegregation: A Model at Work, 1978, p. 74. Bloomington/Indianapolis, Indiana University, 1978, p. 74.

Although the problem of resegregating students has been receiving attention for some time, not until after the early seventies did educators focus attention upon techniques and strategies to eradicate persistent or re-emergent inequities in the educational system. The Brown decision has not, after all, brought about the complete elimination of discriminatory practices in public schools, but it did provide a legal benchmark for measuring progress toward the achievement of full educational opportunity. Consequently, educators have begun to inform lawmakers of the special problems students in newly desegregated settings face. For example, students tend to get segregated in unitary school systems continue to feel the effects of past discriminatory practices. Consequently, particular attention will soon center on how to avoid resegregation and the accompanying negative effects. (It is also important to note too that Black employees also suffer as a result of the implementation of desegregation plans.)

Given the lack of judicial clarity, and the general reluctance by society to follow the spirit and intent of Brown, no one should be surprised that problems can emerge as a result of desegregation.

Furthermore, it has been minority students, faculty and administrators who have been the recipients of this country's reticence to provide all of its citizens with an opportunity to fully participate in education.

Desegregation and the Black Educator: A Question of Black Survival

As we noted earlier, students have not been the only ones to suffer the negative effects of desegregation. All too often, desegregation has had adverse effects on Black teachers and administrators as well. In many

instances, when all-Black schools closed, both students and personnel were transferred to new schools and to different assignments. It has been well documented that many of these Black teachers and administrators were placed in new work without regard to their expertise, certification, or personal needs.[7] Still others were systematically displaced or demoted as a result of desegregation. In addition to the problems associated with being displaced, minorities find that with the declining student enrollment they are the first to be layed off. Undoubtedly, this is due in part to failure of those who championed civil rights legislation to protect minorities who were the last to be hired.

True, some Black educators have made impressive professional progress since 1954. But a disproportionate number of them encountered unexpected hardships in the wake of the Brown I and II decisions.

After the Brown decisions, American society confronted a curious paradox. On the one hand many citizens opposed the judicial decisions and steadfastly refused to commit themselves to the principles set forth in the rulings. On the other hand, "many people, both Black and white, assumed that mixing Black and white children in schools and classrooms would magically provide quality education. Few people confronted the hard realities of what quality education meant or would cost."[8] Few indeed, foresaw the hardships that would be forced on Black students, educators, and administrators--and on the Black community in general. Everyone understood that segregation had had injurious effects on Blacks, but most thought that the pain and sorrow would disappear with desegregation. In many respects desegregation would, in fact, give rise to problems not apparent when segregation had operated legally.

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[7]See Patricia Lutterbie, "Black Administrators: Winners and Losers," Integrated Education, 12, May, 1974.

[8]Bernard C. Watson, "School Integration: Its Meaning, Costs and Future," Journal of Law and Education, 4, January, 1975, p. 15.

"Desegregation has been a tragic phenomenon for many Black [educators]. Ironically, compliance with federal laws designed to end segregation and discrimination failed to achieve the designated goal."[9] One problem was the discriminatory hiring, promotion and retention policies of school districts. The exclusionary approach has had a double-barreled effect on the Black community. First, it reduced the number of Blacks in teaching and administrative positions. Next, it reduced the education payroll.

In order to establish a clear picture of the situation, one must first review the law governing the employment rights of all educators as schools desegregate. The Fifth Circuit Court of Appeals rendered a decision in Singleton v. Jackson Municipal Separate School District[10] forcing school boards to develop standards to ensure that all staff members be assessed according to competence rather than race. The court held that in the event of personnel reduction, the more competent would be retained and no new personnel would be hired.

In the past, segregation had ironically benefitted Blacks by providing them with an economic shelter. As long as segregation existed, Black professionals enjoyed a monopoly on the Black education market. Therefore, segregation provided "a sheltered market for their talents which produced economic security and status."[11] But desegregation collapsed this shelter. Blacks found themselves competing with whites for educational employment, and when teaching and administrative positions became scarce due to the

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[9] Everett E. Abney, "The Status of Florida's Black School Principals," Journal of Negro Education, 43, Winter, 1974, p. 3.

[10] 419 F. 2d 1211, cert. denied, 1970, 396 U.S. 1032.

[11] Abney, op. cit., p. 11.

elimination of dual school systems, more often than not Black educators found themselves demoted or displaced. In short, they found the machinery of desegregation controlled by the same people who had fought to retain the separate but equal facilities.

Samuel B. Ethridge[12] noted that in state after state the prestige, pay, and positions of Black educators diminished with the coming of desegregation. Ethridge, the National Education Association's Director for Teachers' Rights, recorded and then published accounts of the harsh treatment Blacks endured during the desegregation efforts between 1954 to 1975. Although the study by Ethridge was really a projection, his findings have been corroborated by Lutterbie[13] and Abney.[14]

The greatest displacement occurred in Texas, Arkansas, Kentucky, and West Virginia, and the most typical hardship came when large numbers of small schools consolidated as a result of desegregation. In these four states, between 55 and 65 percent of all Black principals were displaced. North Carolina, Virginia, Maryland, Georgia and South Carolina experienced a smaller reduction in number of Black administrators, but the proportions there still ranged between 35 and 37 percent. The reduction of Black principals in Alabama, Mississippi, Louisiana, Oklahoma, Delaware, Florida, and Tennessee ranged from 40 to 45 percent.

Translated into actual numbers, Black school principals dropped from 5,308 in 1970 to 3,172 in 1972.

In 1965, the nation learned that some 5,000 teachers would be displaced in 17 Southern states as a result of school desegregation. Using the number

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[12]Samuel B. Ethridge, remarks at Southern Christian Leadership Conference, August 14, 1975, Anniston, Alabama.

[13]Lutterbie, op. cit.

[14]Abney, op. cit. p. 3-8.

of Black students and the average teacher-pupil ratio to project the number of Black teachers who would have been employed had school boards continued to hire at a rate reflecting the number of Black pupils, Ethridge calculated that by 1970, 31,584 teachers would be displaced in 17 Southern and border states. His projection eventually proved to be quite accurate. Not all the teachers were fired, but many who resigned or retired were never replaced. Furthermore, Blacks seemed to have been discriminated against during recruitment. Using the average salary for each state and the displacement factor, the economic loss from the educational system to be Black community for the 1970 school year alone approached 250 million dollars--a figure that suggests that Blacks themselves made the greatest financial sacrifices in effecting integration.

In the North, displacement occurred somewhat differently than it did in the South. The Northern teachers were displaced from jobs they never really had. In other words, if one applied in the North the same quota criteria applied to Southern states, New York State, for example, would have hired 20,000 Black teachers in 1970 and 20,400 in 1972. The New York Black student population grew by more than 400,000 from 542,000 in 1970 to 956,000 in 1972. During the same period, the Black teacher population grew only 407 from 7,054 to 7,461. Taking the pupil-teacher ratio into consideration, it should have increased by 16,000.

The practical result of this much more subtle form of discrimination was that Black educators found themselves seeking employment in other fields. This waste could probably have been avoided had the critical decisions not been placed in the hands of those who had fought to maintain segregation to begin with. These segregationists used the power they had, in affect, to refine discriminatory practices while appearing to desegregate.

Black educational displacement need not be the inevitable result of desegregation, but Black educators probably should ally themselves with labor unions and recognize, in doing so, that teacher displacement is, after all, analogous to the problem of staff layoffs and reductions brought on by a worsening economy and (in education) declining student enrollment. Professional teacher organizations and labor organizations have some influence on personnel policies and practices of school districts. Though they may be neutral on their face and in intent, employment practices cannot be legally countenanced if they encourage discrimination. The unions and professional organizations are well equipped to detect this discrimination.

In Griggs v. Duke Power Co.[15] the Court struck down testing, employment selection, and promotion procedures that discriminate, either de jure or de facto, against Black employees. Courts have long recognized that employment discrimination was often exercised through such negative acts as failure to hire, failure to promote, and failure to change practices that perpetuate the effects of discrimination. They have recognized too that these negative acts can often be determined only by inference from other facts. These other facts might include past employment practices that have had a disproportionately adverse impact upon minority groups or current practices that perpetuate or fail to correct the adverse impact.

Moreover, several courts have recognized that discrimination may be best evidenced by significant statistical disparities. This reasoning has, for example, been applied for the last three years to seniority provisions, reflecting narrow interpretations of Section 703 (h) of Title VII of the Equal Employment Opportunity Act of 1972.

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[15] 401 U.S. 424, 431 (1971).

Two of the major problems confronting a teachers' organization in a school district preparing to desegregate is the fear of losing both its power and job opportunities for its members. Overcoming these problems, which have precedents in industry, requires negotiating skill--particularly when the remedy must ensure that Blacks are not penalized in the process.

The one tradition that, if eliminated, would most enhance the work outlook for Black educators is the practice of determining promotions, transfers, and layoffs by seniority. Seniority is, of course, the most complicated and politically dangerous issue to deal with, for both teacher organizations and employers guard it jealously. Not surprisingly, then, seniority is the one problem that has been ignored by civil rights legislation and school districts.

Thus, our deep concern is that the few gains Black educators made during the sixties and seventies may well erode in the eighties because of declining student enrollment and a worsening economy.

What Can Be Done? "Alternatives for Action"

While it may appear that Black educators have few alternatives, some do exist. The displacement of Black faculty members and administrators can, for example, be fought through the courts even though litigation is admittedly slow and costly, and justice is often tardy.

Blacks could accomodate themselves to the status quo, and the few Black educators we do have could become tokens in the present system, left there to face the continuing subtle discrimination against Black students and educators.

A more radical step might be to withdraw from the system and develop alternative schools controlled by Black educators and parents, but this step would be impractical both financially and instructionally.

A fourth option exists: Black educators and the Black community as a whole could--should--become more actively involved in the educational process. In fact, only through such involvement can they exert their influence in educational decisions. In many localities, Blacks already have the collective power to make the school system respond, and through increased collective action at the national level they can certainly make the schools both responsive and responsible.

Minority Students, Tracking, Grouping and Resegregation

Many school systems remain segregated "even after a court-ordered desegregation plan has been fully implemented."[16] Through such practices as the unequal application of disciplinary measure, ability grouping, and educational placement, minority students continue to receive uneven and unfair treatment. They have been, in effect, resegregated.

Tracking, or ability grouping, is said to be the most frequently used technique to produce the resegregation of students. The controversy surrounding ability grouping based on intelligence testing continues to rage. Critics argue that grouping students according to test results may well have a detrimental effect on minority students by fixing them with labels.

Courts have consistently held that when desegregated plans have been implemented in a previously segregated school system, using "standardized achievement or intelligence test scores is prohibited when the intended and actual result is the perpetuation of the dual system."[17] This point was

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[16] Betsy Levin and Philip Moise, "School Desegregation Litigation In the Seventies and the Use of Social Science Evidence: An Annotated Guide," Law and Contemporary Problems, 39, Winter, 1975, p. 120.

[17] Ibid.

reinforced in Lemon v. Bossier Parish School Board[18] where the Fifth Circuit Court of Appeals rejected the decision by the United States District Court for the Western District of Louisiana and remanded the case to the district court to have the school system rewrite its student assignment plan. According to the Appellate Court, basing the assignment of students on achievement test scores violates the precedent established by the United States Supreme Court in Singleton.[19] Specifically, the Appellate Court referred to the higher holding that the court would refuse to entertain the question of testing in a recently desegregated school system.[20]

In another case,[21] a federal district court agreed with the plaintiffs that the use of ability grouping in a newly desegregated school constituted a perpetuation of past discriminatory practices. Here Black students had been denied the same educational benefits as white students when the school system was segregated. Moreover, when the dual system vanished "the black students lost their principal and the educational philosophy of using a graded structure."[22] But white students did not experience this turmoil. Furthermore, no adjustments were made in the philosophy of homogeneous grouping when the

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[18]444 F. 2d. 1400 (5th Cir. 1970).

[19]Singleton v. Jackson Municipal Separate School District, 419 F. 2d. 1211, 1219 (5th Cir.), rev'd, 396 U.S. 290 (1970).

[20]Id.

[21]Moses v. Washington Parish School Board, 330 F. Supp. 1340 (1971).

[22]John N. Drowatzky, "Tracking and Ability Grouping in Education," Journal of Law and Education, 10, January, 1981, p. 54.

schools desegregated. This system assigned students to eleven different levels according to reading ability and achievement. No compensatory and remedial assistance was provided.

> Rather it appears that the school considered the nature of its homogeneous ability-achievement grouping to be, in and of itself, compensatory; that is, slow students were compensated by being placed with other slow students and being exposed to regular school materials at a slower pace.[23]
>
> [In addition], "nearly everyone remained in the same group and level throughout the entire school year, and only changed groups and levels at the end of the year. This lack of mobility tends to lock students, especially those in the bottom sections, into the same section throughout grammar school."[24]

The court continued its rejection of assigning students on the basis of test scores in newly desegregated schools:

> It becomes readily apparent to anyone familiar with the nature of white and black schools in the South that the children going to the white school are invariably provided with better facilities, faculties, and educational materials than their counterparts in the Black schools. It is equally apparent, given the obvious reluctance and recalcitrance of school boards to establish unitary schools, that the school board in deciding to use testing probably anticipated that most whites would score well and thus used testing to maintain as many segregated schools as possible. Testing used to resegregate students in a recently desegregated school system is not permissable.[25]

Thus, clearly a denial of equal educational opportunity and equal protection of the laws.[26]

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[23] Moses, supra note 20 at 1343.

[24] Id. at 1344.

[25] Id. at 1345.

[26] Id. at 1343.

> Without determining per se the validity of the use of such tests, the Court holds that testing, as used in Franklinton Elementary, denied the plaintiffs equal educational opportunity and impeded the immediate establishing of a truly unitary school as compelled by Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969). It also had the effect of preserving the dual system of education prohibited under Brown v. Board of Education, 347 U.S. 483 (1954).[27]

The Court also examined questions associated with the prior effects of segregation having apparently contributed to the test scores and, thereby, resulting in minority students being resegregated within individual classrooms.[28]

> Ability groupings, or the so-called "tracking method," may have some academic justification and may be an educational rather than a constitutional issue, but tracking or "ability grouping" is suspect when it first begins to flourish on the eve of or during a desegregation suit.[29]

The Court again examined the segregative effect of grouping in Hobson v. Hansen.[30] Here the school system had been ordered to stop unconstitutional de jure segregation. It held that tracking was unconstitutional when minority students are systematically and permanently tracked in the lower levels of curricula. Theoretically those placed in the lower tracks are supposed to

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[27] Id. at 1342.

[28] Acree v. County Board of Education, 458 F. 2d. 486, 488 n.3 (1972), cert. denied, 409 U.S. 1006 (1972).

[29] Singleton, supra note 18 at 349.

[30] 269 F. Supp. 401 (1967), aff'd sub nom. Smuck v. Hobson, 408 F. 2d. 175 (1969).

benefit from compensatory and remedial instruction so they can move onto a higher track. However, such instructional assistance, in this case, was inadequate. In a decisive ruling, Judge Wright enjoined the school system from the further use of the tracking system and based his decision on the following findings:

1. Student placement in tracks within the schools correspond significantly to class and race;
2. Track assignments did not permit the students to move from lower to higher tracks; and
3. The standardized tests used to classify students were not appropriate for the majority of the black and poor white students in that the norm (the reference group) had been primarily white-middle class.[31]

In sum, classification must not be based on criteria biased toward non-white and poor students, and recently desegregated schools (at least) should avoid assigning students according to their social and economic status.[32]

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[31] Id. at 512-14.

[32] Id.